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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,411	07/23/2004	Uwe Skulley-Betz	3040	5780
7590	07/27/2009		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			RATCLIFFE, LUKE D	
			ART UNIT	PAPER NUMBER
			3662	
			MAIL DATE	DELIVERY MODE
			07/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/502,411
Filing Date: July 23, 2004
Appellant(s): SKULTETY-BETZ ET AL.

Michael Striker
For Appellant

EXAMINER'S ANSWER

The examiners answer dated 11/16/07 is vacated and replaced with this supplemental examiners answer. The purpose of this is to address the canceled claims 4 and 5. The reply brief noted dated 4/4/08 is also vacated and the arguments will be included in this supplemental examiners answer.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5949529	Dunne	9-1999
6037874	Heironimus	3-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 6, 8, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunne (5949529).

Referring to claims 1 and 11, Dunne shows a handheld laser distance measuring device with a position sensor (column 6 lines 58-column 7 line 3), and the position sensor is connected with a signal transducer that emits a perceptible signal which depends on the special orientation (column 6 lines 58-column 7 line 3). Dunne also shows a signal transducer that is an optical signal transducer, an acoustic signal transducer, or a tactile signal transducer (column 6 lines 58-column 7 line 3).

Referring to claim 6, Dunne shows an acoustic signal wherein the volume, pitch, frequency of recurrence and/or duration of which are a function of the special orientation (column 6 lines 20-35).

Referring to claim 8, Dunne shows a position sensor that is a tilt sensor (column 6 lines 58-column 7 line 3).

Referring to claim 9, Dunne shows that to trigger the signal transducer as a function of the spatial orientation, a control unit is provided which is connected with the position sensor on the input side and with the signal transducer on the output side (column 6 lines 58-column 7 line 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunne (5949529).

Referring to claim 7, It would be obvious to use a tactile signal transducer because this is the other obvious sense to use if the senses of sight and hearing are occupied or if the users hearing and sight is impaired. Dunne teaches using an audible signal that varies in intensity and/or frequency or recurrence, which is a function of special orientation, and the mere introduction to this stimulus to another sense is obvious.

Claims 3-5, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunne (5949529) in view of Heironimus (6037874).

Referring to claims 3, and 12, Dunne shows a handheld laser distance measuring device with a position sensor (column 6 lines 58-column 7 line 3), and the position sensor is connected with a signal transducer that emits a perceptible signal which depends on the special orientation (column 6 lines 58-column 7 line 3). Dunne shows a signal transducer that is an optical signal transducer, an acoustic signal transducer, or a tactile signal transducer (column 6 lines 58-column 7 line 3). However Dunne dose not shows using an optical signal transducer. Dunne also teaches the signal transducer to be altered in frequency being equivant in both an audible and visual signal as dictated by the position sensor (column 6 lines 58-column 7 line 3).

Heironimus however does show using an optical signal transducer (column 7 line 65-column 8 line 23). Heironimus also teaches changing the frequency of the blinking light with respect to a position sensor. It is inherent that the light will be in the visible wavelength range in order for the device to function. It would have been obvious to modify Dunne to use the optical signal transducer so the device can fit the needs of the hard of hearing.

Referring to claim 10, using a comparator and threshold is well known for triggering any signal in a distance measuring device and adds no new or unexpected results.

(10) Response to Argument

Referring to the argument dated 10/9/07 that contests that Dunne does not disclose every element of claim 1 because Dunne does not disclose a laser that emits

light in the visible wavelength: The examiner is reading the claim as broadly as reasonable in light of the specification, the claim discloses a signal transducer that is connected to a position sensor. The signal transducer is capable of alerting the user with perceptible signals which depends on the spatial orientation of the position sensor. The claim then goes on to claim the signal transducer is an optical signal transducer, an acoustic signal transducer, or a tactile signal transducer and wherein the optical signal transducer is a laser that emits light in the visible wavelength range and serves to measure distance. Note the applicant claimed these features in the alternative such that a single one of the optical transducer, acoustic transducer, or a tactile transducer would read on the claim. However if the signal transducer were to be an optical transducer it would need to include a laser that emits light in the visible wavelength range and serves to measure distance. Dunne shows an acoustic signal transducer (column 6 line 58-column 7 line 3). Being an acoustic transducer it is exempt from the need to transmit a laser that emits light in the visible wavelength range and serves to measure distance because the claim was made in the alternative.

Referring to the argument dated 10/9/07 that Dunne does not disclose a position sensor, signal transducer, and the laser are integrated in the same housing. The examiner would like to point out figure 1 that shows a view of the survey apparatus. The housing being the viewable parts of the survey apparatus, the purpose of the housing as taught by Dunne is to enclose the electronics including the position sensor, a signal transducer, and the laser. The housing of the system is outer portions of

figures 1-3 thus enclosing and integrating the position sensor, signal transducer, and the laser.

Responding to the arguments set forth in the reply brief dated 1/15/08: Dunne shows a single system that includes the laser, signal transducer, and the position sensor (figures 1-3). This lone system when connected shares a single housing when in use, the single housing being all of the exterior portion of the system. The housing is this exterior portion because this particular embodiment only works when the two pieces are connected as one and disconnecting them would result in this embodiment not functioning. Dunne does not teach the use of this system broken apart which would results in two separate housings, Dunne only teaches the two combined into a single housing thus reading on the claim.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Luke Ratcliffe

/Thomas H. Tarcza/

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